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### REMARKS

Claims 1-12, 23-25 are pending in the application. Claims 13-22 were previously canceled. No Claim stands allowed. Claim 1 is amended to overcome rejection under 35 USC § 103(a) as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of Friedman (U.S. Patent No. 5,534,593) and Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002. No new matter is added. Support for the amended claim 1 can be found throughout the specification, particularly paragraphs [005], [0007], [0014] and [0020] on respective pages 2 and 7 and Table II.

Favorable reconsideration and allowance are requested in light of the foregoing remarks which follow.

#### **1. Interview Acknowledgment**

Applicants thank Examiner Patterson for the courtesies extended to Applicants' representative during March 5, 2008 telephonic interview. During the interview, the differences between the claimed invention and Friedman (U.S. Patent No. 5,534,593) in view of Kiang (U.S. Patent No. 5,370,941), Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002 were discussed. It was decided that the Applicants amend claim 1 to recite a paperboard substrate, a grease resistant layer, a tie layer, and a food contact release layer that the food contact layer comprises a physical blend consisting of from about 50% to 75% by weight of a polymethylpentene homopolymer and polypropylene homopolymer bonded to one side of the substrate and wherein the tie layer being disposed between the grease resistant layer and the food contact layer, and wherein the grease resistant layer, the tie layer, and the food contact layer

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being coextruded onto the substrate. Examiner Patterson agreed with the Applicants' representative that the amended claim 1 feature was not taught or suggested by Friedman (U.S. Patent No. 5,534,593) in view of Kiang (U.S. Patent No. 5,370,941), Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002. The substance of the interview is summarized in the following remarks.

During the telephonic interview on March 5, 2008, Applicants and Applicants' representative discussed that:

1) Friedman (U.S. Patent No. 5,534,593) is directed to a blend of polypropylene and polymethylpentene (PMP) in a single-layer film. On the contrary, the present invention recites in claim 1, a multi-layer structure having PP & PMP blend, Tie layer, nylon layer, and paperboard. Friedman (U.S. Patent No. 5,534,593), at best, asserts the use of this invention as a release film. On the other hand, the present invention is used for packaging and baking food. Accordingly, this rejection is clearly predicated, in part, on an obvious-to-try and hindsight reliance of teaching of applicants' application. Hindsight and obvious-to-try are not the standard of review. The court has clearly held that the appropriate standard is obvious-to-do based on reasonable motivation from the references and not obvious-to-try. *In re Antonie*, 559 F2d 618, 195 USPQ 6 (C.C.P.A. 1977) and *In re Tomlinson et. al.*, 363 F2d 928, 150 USPQ 623 (C.C.P.A. 1966). On this basis alone, it is clear that the Office has failed to establish a *prima facie* case of obviousness since not all of the claim limitations are disclosed or suggested by Friedman, much less a motivation to try to optimize as the Office suggests. In addition, the present invention discloses a physical blend of two homopolymers, polypropylene and poly (methylpentene). Each homopolymer is comprised solely of the respective monomers. For instance, a polypropylene

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molecule is comprised of thousands of propylene monomers that are linked with covalent bonds within the polymer chain. This is drastically different than a random copolymer. In a copolymer, two or more different monomers are covalently bonded in a random order within the same polymer chain. So, there can be covalent bonds formed between two propylene monomers, two methylpentene monomers, or between propylene and methylpentene monomers. This molecule will have properties (melting point, softening point, density, etc.) that are between those for the respective homopolymers. Usually, they can be predicted by a weighted average.

Therefore, a physical blend of two homopolymers will have some properties that are between the two unmixed homopolymers. These properties of the blend will have different numerical values than the random polymer. The reason is that in the copolymer, the two types of monomers (i.e. propylene and methylpentene), monomers are forced to be next to each other because of the covalent bonds between them and this is how the physical properties are "averaged". In the physical blend of the homopolymers, only propylene to propylene and methylpentene to methylpentene covalent bonds are formed.

2) Unlike with random copolymers, it can be difficult to form a miscible (single phase) blend of two homopolymers, especially those that are non-polar. As the molecular weight of the polymers chains increases (i.e. the number of bonded monomers increases), the two homopolymers become less and less chemically and physically similar. Therefore, the range of possible blend compositions that will provide a single phase system decreases significantly. In the end, the two homopolymers could separately form two distinct phases. So, in the present invention, a great deal of work was done to determine the composition range of a blend of the polypropylene homopolymer and polymethylpentene homopolymer that would provide the best

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chance for a system that was miscible or not grossly phase separated. If phase separation does occur, the food contact layer will not provide adequate stiffness, temperature resistance, and release (low surface tension) properties.

2. Rejection of claims 1-3, 6, 9-12 and 23-25 under 35 USC § 103(a) as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of Kan et al (U.S. Patent No. 5,370,971), Akki et al (US Patent Publication No. 2001/0007005 A1) and Japanese patent No. 03191002.

Claim 1 is amended to overcome rejection of claims 1-12 and 23-25 under 35 USC § 103(a) as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of Friedman (U.S. Patent No. 5,534,593), Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002. The amended claim 1 recited a food contact release layer comprising a physical blend consisting of from about 50% to about 75% by weight polymethylpentene homopolymer and polypropylene homopolymer bonded to one side of the substrate. The remainder of the physical blend is from about 25% to 50% by weight polypropylene. The relative proportion of polymethylpentene homopolymer and polypropylene homopolymer in the physical blend are such that the blend of polymethylpentene and polypropylene exhibits softening and melting point greater than softening and melting point of polypropylene homopolymer. The physical blend of polymethylpentene homopolymer and polypropylene homopolymer of the present invention exhibits softening and melting points greater than 300 °F. However, Kiang (U.S. Patent No. 5,370,941) fails to disclose a food contact release layer comprising a physical blend of polymethylpentene and polypropylene having softening and melting point greater than softening

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and melting point of polypropylene. The inapplicability of Kiang (U.S. Patent No. 5,370,941) to the patentability of amended Claim1 is noted hereinabove and attention is invited to such discussions. Particularly, the failure of Kiang (U.S. Patent No. 5,370,941) as the primary reference in view of Friedman (U.S. Patent No. 5,534,593), Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002 is respectfully submitted to be inappropriate in view of the failure of Kiang (U.S. Patent No. 5,370,941) to either teach, suggest or disclose the unexpected properties discussed above by the physical blend.

With respect to the reference of JP 03191002, this cited reference is directed to the use of polymethylpentene for the purpose of using it as a binder for sintering metallic and ceramic materials. This has no similarity to the present invention as recited in amended claim 1. The Examiner discusses the use of polymethylpentene for JP 03191002 invention due to its high softening point and favorable melt flow properties. Polymethylpentene was chosen for the present invention application because of these properties, but in the present invention, the inventors are using those properties for a totally different invention and for different reasons.

Thus, irrespective of what Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) teaches with respect to by the physical blend suitable for use in a food contact release layer in combination with the teachings of Japanese Patent No. 03191002, the failure of Kiang (U.S. Patent No. 5,370,941) as a primary reference negates the combination of Kiang (U.S. Patent No. 5,370,941) in view of Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002 as a basis for rejection of claims 1-12 and 23-25 of the present application.

Withdrawal of the rejection of claims 1-12 and 23-25 as being unpatentable under 35 USC §103(a) over Kiang (U.S. Patent No. 5,370,941) in view of Friedman (U.S. Patent No.

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5,534,593), Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002 is respectfully requested.

With respect to rejection of claims 4, 5, 7, and 8 under 35 USC § 103(a) as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of various references such as Lorence et al. (U.S. Patent No. 5,818,016), Shanton (U.S. Patent No. 6,066,375), Bissot (U.S. Patent No. 4,818,782), and Adur et al. (U.S. Patent No. 5,942,295), Akki et al (U.S. Patent Pub. No. 2001/0007005 A1) and Japanese Patent No. 03191002, the Examiner's attention is directed to previous responses for such discussions to avoid redundancy.

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CONCLUSION

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Therefore, Applicants respectfully submit that the amended independent claim 1 particularly define and patentably distinguish the present invention over the cited references. In addition, all of the dependent claims which depend from amended claim 1 also define a patentable subject matter. Accordingly, reconsideration of the rejections and allowance of claims 1-12 and 23-25 are earnestly requested. However, should the Examiner have any remaining questions and the attending to of which would expedite such action, the Examiner is invited to contact the undersigned at the telephone number listed below.

One extension of time is believed to be required. The Commissioner is authorized to charge any fees associated with this or any other communication, or credit any over payment, to Deposit Account No. 09-0525.

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